

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

Michael Ver Hagen d/b/a Data Design,

Plaintiff,

v.

BeneTek, Inc.

Defendant.

Case No. 2:22-cv-1245-JPS

STATEMENT OF CONTESTED MATERIAL FACTS

Plaintiff Michael Ver Hagen d/b/a Data Design (“Data Design”) has brought claims for copyright infringement and breach of contract against Defendant BeneTek, Inc. (“BeneTek”) (collectively “the Parties”). BeneTek has brought counterclaims breach of contract, professional negligence, and breach of the implied warranties of merchantability and fitness for a particular purpose. The following facts have not been stipulated to by the parties:

1. BeneTek used the ACA Help Software between late 2016 and January 2022. *See* Otto Decl. (Doc. 13), pg. 1, ¶ 4.

2. In Mr. Otto's email dated November 29, 2018, Mr. Otto states that "At the outset we agree on results and payment. Payment requests exceed the agreed upon amount. I agree that part of the arrangement was for you to receive a fee for each active person on the system. Problem – there are individuals on the system that aren't active for the client. We can talk about that and I'm reasonably sure you will understand and agree. What else do I owe you, why and for what?" Nov. 29, 2018 Email Exchange, pg. 2, Griggs Oct. 5, 2023 Decl., Ex. B.

3. In response to Mr. Otto's November 29, 2028 email, Mr. Ver Hagen states that "...none of that excuses using the system while ignoring the royalty requirement." *Id.*

4. There was no oral agreement between the parties to suspend or waive royalty payments owed under the written Agreement. *Id.*

5. Mr. Ver Hagen stated in his November 29, 2018 email to Mr. Otto: "If you consider the approximately 4,000 hours that I put into ACA Help in about 18 months, you would see that you haven't paid anywhere near the market rate for that work. *Id.*

Dated: October 5, 2023

s/Michael T. Griggs
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